# In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 452

LEROY GRAHAM, ET AL., PETITIONERS

*v.*

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA*

## MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

The United States submits that review by this Court is warranted in this case both by reason of the importance of the question of law determined by the court below, we think clearly erroneously, and because of the importance of the case itself.

This case is an attempt by Negro firemen to require the Brotherhood of Locomotive Firemen and Enginemen and the main Southern railroads to obey the ruling of this Court four years ago



818365—49

that it was unlawful for the Brotherhood, acting as representative for the craft of firemen, to enter into and enforce agreements discriminating against Negro members of the craft. *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192; *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210. The complaint (R. 1) alleges that the Brotherhood and the railroads have combined to enforce the very agreement held unlawful in those cases (R. 14), and that as a result of the discrimination Negro firemen continue to be unlawfully displaced (R. 14). The temporary injunction granted by the District Court on December 3, 1947, against further discrimination *pendente lite* (R. 66–72) was vacated by the Court of Appeals on December 9, 1947 (R. 81–82), and the discrimination has continued for the ten and one-half months during which the question of venue was before the court below.

1. The case is important because it represents an effort by the Negro firemen to enforce the *Steele* and *Tunstall* rulings in a single lawsuit applicable throughout most of the South, instead of through a number of suits brought in different districts against various railroads and different locals of the Brotherhood. The Southern railroads probably cannot be sued in the Brotherhood's home district (Cleveland), and completely effective relief cannot be granted unless it is binding upon both the Brotherhood and the rail-

roads, the parties to the illegal agreement. And it has been suggested that the railroads are indispensable parties to suits involving the validity of the agreements.[1] It is apparently the tactics of the Brotherhood, in a case in which it obviously has no defense on the merits, either to force the suit to be brought in Cleveland, which is hardly an appropriate forum for a controversy involving practices on the Southern railroads under agreements made in the District of Columbia, and where there would be a question whether some possibly indispensable parties could be reached, or to force the Negro firemen into a protracted series of lawsuits throughout the South, which they would be required to wage with meagre financial and other resources[2] compared with those of the Brotherhood and the railroads. See the Appendix, *infra*, for the Brotherhood's attempts to defeat cases brought in other districts on similar grounds.

---

[1] During the argument of the motion in the District Court, Judge Holtzoff stated (Tr. 142, not in printed record):

"* * * if the motion to quash the service is sustained then you will be in position to move to dismiss because of lack of an indispensable party, because in my opinion both the railroad and the Brotherhood are indispensable parties to the adjudication of the validity * * *"

[2] "4. The plaintiffs in this action and the other Negro firemen in whose behalf this suit has been brought are men of little means who are not financially or otherwise able to take necessary action to secure their rights under the law. This is especially true because the acts complained of have deprived these plaintiffs of the jobs or seniority rights upon which they depend for their livelihood" (R. 24).

We think it appropriate for this Court to take these considerations into account, and to grant certiorari in order to prevent this misuse of the processes of law[1] and the continued deliberate flouting of the law as established by this Court which the decision below permits.

2. The restrictive effect given by the court below to the District of Columbia venue statute also presents a question of importance. Although the issue affects only the District of Columbia, a rule which would result in discriminating against persons seeking to use the courts of the District, as compared with state courts, does present a question of sufficient importance for this Court to review. Cf. *National Mutual Insurance Company of the District of Columbia* v. *Tidewater Transfer Company, Incorporated,* No. 29, this Term.

---

[1] The same affidavit prophetically states (R. 30–31):

"In all Court actions heretofore brought to enjoin the unlawful practices here complained of, the defendants have entered dilatory pleas and motions and have resisted all efforts to bring the issues to early determination. It is to be anticipated that similar moves will be made in this action. The passage of time necessary before there can be a final hearing and determination in this action will bring about the displacement or demotion of many of these plaintiffs and ultimate judgment in their favor will be a hollow victory. Such displaced firemen have no financial means of their own to support themselves and their families during the long period which would elapse between the date of their discharge and the ultimate judgment in this case."

The general federal venue statute (28 U. S. C. (1946 ed.) 112, now 28 U. S. C. 1391 (b)) required suit to be brought in the district of which the defendant was "an inhabitant." The District of Columbia venue statute permits suits to be brought against a defendant either "resident" of or "found within said district." District of Columbia Code, Section 11–306.

The decision below means that, although the District of Columbia courts combine the attributes of federal and state courts, in cases in which state courts would have concurrent jurisdiction with the federal the District of Columbia courts would not have jurisdiction at all unless the requisites of the general federal venue statute, rather than the District statute, were satisfied. To be more concrete, this means that an unincorporated association (or a corporation in the absence of a requirement of consent) doing business or found within the District but not having its main office or place of incorporation within the District cannot be sued within the District even though it could be under the same circumstances in any state.

The Court of Appeals assumed, *arguendo*, that the Brotherhood was "found" within the District of Columbia within the meaning of the local statute if that statute applied. We think that on the facts of the record the Brotherhood was so "found" within the District. Thus, the present

case clearly comes within the words of the District venue statute. And certainly nothing in the language of the general federal venue statute enacted mainly for the governance of the federal courts in the states, or of the two venue statutes read together, justifies a failure to apply the plain and unambiguous language of the former. It is significant that the court below does not rely on anything in the words, purpose or history of the local statute as a reason for disregarding its language.

The court seemingly rested its decision on the constitutional ground that a case over which the federal courts in the states as well as in the District would have jurisdiction under Article III of the Constitution cannot also fall within the jurisdiction of the District of Columbia courts under Article I and be controlled as to venue by legislation enacted under that Article. But since federal and state courts have concurrent jurisdiction over many cases, and Article I gives Congress the power of a state legislature over the courts of the District of Columbia, this is a complete *non sequitur*. Although Congress may legislate for the District of Columbia courts under both Article III and Article I, Section 8, Clause 17, of the Constitution, the coexistence of the two sources of power does not decrease the jurisdiction of the courts of the District of Columbia; on the contrary, it gives them the expanded jurisdiction

possessed by the federal and state courts combined. And obviously the two constitutional powers should be construed in harmony with and not in opposition to each other, so that the one will not limit the scope of the other. But the court below seems to have read the two Articles as if they were mutually exclusive.

The court below relied, we believe mistakenly, on a passage from this Court's opinion in *O'Donoghue* v. *United States*, 289 U. S. 516, 546,[4] written in connection with a problem of an entirely different sort. But only this Court is in a position to set the Court of Appeals straight as to the proper interpretation of the *O'Donoghue* opinion.

Outside of the District of Columbia, the cause of action stated in the present complaint falls within the area of concurrent jurisdiction of the

[4] "Since Congress, then, has the same power under Art. III of the Constitution to ordain and establish inferior federal courts in the District of Columbia as in the states, whether it has done so in any particular instance depends upon the same inquiry—Does the judicial power conferred extend to the cases enumerated in that article? If it does, the judicial power thus conferred is not and cannot be affected by the additional congressional legislation, enacted under Article I, § 8, cl. 17, imposing upon such courts other duties, which, because that special power is limited to the District, Congress cannot impose upon inferior federal courts elsewhere. The two powers are not incompatible; and we perceive no reason for holding that the plenary power given by the District clause of the Constitution may be used to destroy the operative effect of the judicial clause within the District, where, unlike the territories occupying a different status, that clause is entirely appropriate and applicable." 289 U. S. at 546.

state and federal courts, as the *Steele* and *Tunstall* cases conclusively demonstrate, the former coming from a state court and the latter from a federal court. Since the District of Columbia courts have the same authority as the state courts, it is clear that the court below erred in holding that the local venue statute, which is modeled on those of the states and which gives the District courts a venue similar to that of state courts, could not apply.

For the above reasons, we urge that the petition for a writ of certiorari be granted. We also suggest that if certiorari be granted, and if proper application be made by petitioners, this Court reinstate the injunction *pendente lite* granted by the District Court and vacated by the court below, in order to prevent further unlawful displacement of colored firemen while this protracted litigation runs its course.

Respectfully submitted.

PHILIP B. PERLMAN,
*Solicitor General.*

ROBERT L. STERN,
*Special Assistant to the Attorney General.*

DECEMBER 1948.

## APPENDIX

In *Rolax* v. *Atlantic Coast Line Railroad, Brotherhood of Locomotive Firemen and Enginemen, et al.*, Civil Action No. 670, E. D. Va., Richmond Division, filed April 12, 1947, the Brotherhood moved to dismiss on the grounds (1) that venue was lacking over it since it was not an inhabitant of the district, and (2) that the local lodges could not represent it for purposes of a class suit. The local lodges moved to dismiss on the ground that they were not representative of the Brotherhood. The motions were overruled by the district court in December 1947, and the case is scheduled for trial.

In *Hinton* v. *Seaboard Air Line R. Co., Brotherhood of Locomotive Firemen and Enginemen, et al.*, Civil Action No. 674, E. D. Va., Norfolk Division, the Brotherhood and the locals moved to dismiss on the same grounds as in the *Rolax* case, and the railroad moved to dismiss on the ground that there was no jurisdiction over the Brotherhood and the Brotherhood was an indispensable party. These motions were overruled by the district court on October 13, 1947.

In *Benjamin* v. *Louisville & Nashville R. Co., Brotherhood of Locomotive Firemen and Enginemen, et al.*, Civil Action No. 1285, W. D. Ky., Louisville Division, filed February 7, 1947, the Brotherhood and the railroad moved to dismiss (in a motion

and amended motion) on the same grounds as in the *Hinton* case. These motions have not yet been acted on by the district court.

In *Salvant* v. *Louisville & N. R. Co., Brotherhood of Locomotive Firemen and Enginemen, et al.*, Civil Action No. 1441, W. D. Ky., Louisville Division, filed February 21, 1948, the local lodges moved to dismiss on the ground that they did not represent the class composed of the lodges of the Brotherhood, the Brotherhood moved to dismiss for improper service of process, and the railroad moved to dismiss on the ground that the Brotherhood was an indispensable party and not suable within the district. On March 19, 1948, the Brotherhood's motion was granted and the other motions denied.

Even if these efforts to defeat all actions brought in any districts in which the Brotherhood and any of the Southern railroads can be reached jointly should ultimately be rejected by the appellate courts (compare *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 143 F. 2d 403 (C. C. A. 4) with the decision below), the defendants will have succeeded in delaying the granting of effective relief to the colored firemen for at least several years.

U. S. GOVERNMENT PRINTING OFFICE: 1948

# In the Supreme Court of the United States

OCTOBER TERM, 1949

---

No. 16

LEROY GRAHAM, ET AL., PETITIONERS

*v.*

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

---

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

---

## MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

---

The United States is interested in this case both by reason of the importance of the question of law determined, we think erroneously, by the court below, and because of the importance of the case itself.

The case is an attempt by Negro firemen to require the Brotherhood of Locomotive Firemen and Enginemen and the main Southern railroads to obey the ruling of this Court four years ago that it was unlawful for the Brotherhood, acting as representative for the craft of firemen, to enter into

and enforce agreements discriminating against Negro members of the craft. *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192; *Tunstall* v. *Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210. The complaint (R. 1) alleges that the Brotherhood and the railoads have combined to enforce the very agreement held unlawful in those cases (R. 14), and that as a result of the discrimination Negro firemen continue to be unlawfully displaced (R. 14). The temporary injunction granted by the District Court on December 3, 1947, against further discrimination *pendente lite* (R. 66-72) was stayed by the Court of Appeals on December 9, 1947 (R. 81-82). On October 26, 1948, on the ground of improper venue, the court ordered the case transferred to the Northern District of Ohio—which hardly seems to be an appropriate forum for a controversy involving the discrimination against employees on the Southern railroads under agreements made in the District of Columbia.

1. The general federal venue statute (28 U.S.C. (1946 ed.) 112, now 28 U.S.C. 1391 (b)) requires suit to be brought in the District of which the defendant is "an inhabitant." The District of Columbia venue statute permits suits to be brought against a defendant either "resident" of or "found within said district." District of Columbia Code, Section 11-306.

The Court of Appeals found that the Brotherhood was not "an inhabitant" of the District within the meaning of the general venue statute, but assumed, *arguendo*, that the Brotherhood was "found" within the District of Columbia within the meaning of the local statute if that statute applied. The court nevertheless held the local statute inapplicable, on the ground that "as applied to all cases which require the exercise by an inferior Federal court of the judicial power conferred by Article III, a general Federal venue statute is exclusive in its operation" (R. 77).

The present case clearly comes within the words of the District venue statute. And certainly nothing in the language of the general federal venue statute enacted mainly for the governance of the federal courts in the states, or of the two venue statutes read together, justifies a failure to apply the plain and unambiguous language of the former. It is significant that the court below does not rely on anything in the words, purpose or history of the local statute as a reason for disregarding its language.

The court seemingly rested its decision on the constitutional ground that a case over which the federal courts in the states as well as in the District would have jurisdiction under Article III of the Constitution cannot also fall within the jurisdiction of the District of Columbia courts under Article I

and be controlled as to venue by legislation enacted under that Article. But since federal and state courts have concurrent jurisdiction over many cases, and Article I gives Congress the power of a state legislature over the courts of the District of Columbia, this is a complete *non sequitur*. Although Congress may legislate for the District of Columbia courts under both Article III and Article I, Section 8, Clause 17, of the Constitution, the coexistence of the two sources of power does not decrease the jurisdiction of the courts of the District of Columbia; on the contrary, it gives them the expanded jurisdiction possessed by the federal and state courts combined. And obviously the two constitutional powers should be construed in harmony with and not in opposition to each other, so that the one will not limit the scope of the other. But the court below seems to have read the two Articles as if they were mutually exclusive.

The decision below means that, although the District of Columbia courts combine the attributes of federal and state courts, in cases in which state courts would have concurrent jurisdiction with the federal the District of Columbia courts would not have jurisdiction at all unless the requisites of the general federal venue statute, rather than the District statute, were satisfied. To be more concrete, this means that an unincorporated association (or a corporation in the absence of a requirement of consent) doing business or found within the District

but not having its main office or place of incorporation within the District cannot be sued within the District even though it could be under the same circumstances in any state.

The court below relied, we believe mistakenly, on a passage from this Court's opinion in *O'Donoghue v. United States*, 289 U. S. 516, 546,[1] written in connection with a problem of an entirely different sort. A mere reading of the language in question will demonstrate its irrelevance here.

Outside of the District of Columbia, the cause of action stated in the present complaint falls within the area of concurrent jurisdiction of the state and federal courts, as the *Steele* and *Tunstall* cases conclusively demonstrate, the former coming from a state court and the latter from a federal court. Since the District of Columbia courts have the same authority as the state courts, it is clear that the

---

[1] "Since Congress, then, has the same power under Art. III of the Constitution to ordain and establish inferior federal courts in the District of Columbia as in the states, whether it has done so in any particular instance depends upon the same inquiry—Does the judicial power conferred extend to the cases enumerated in that article? If it does, the judicial power thus conferred is not and cannot be affected by the additional congressional legislation, enacted under Article I, § 8, cl. 17, imposing upon such courts other duties, which, because that special power is limited to the District, Congress cannot impose upon inferior federal courts elsewhere. The two powers are not incompatible; and we perceive no reason for holding that the plenary power given by the District clause of the Constitution may be used to destroy the operative effect of the judicial clause within the District, where, unlike the territories occupying a different status, that clause is entirely appropriate and applicable." 289 U. S. at 546.

court below erred in holding that the local venue statute, which is modeled on those of the states and which gives the District courts a venue similar to that of state courts, could not apply.

2. If this Court reverses the court below on the question of venue, it will have a choice as to whether to dispose of the other issues in the case itself or to remand them to the lower court. Although the latter course is often followed, it is clearly in the public interest for the Court in this case to see that the propriety of the temporary injunction is determined without further delay.

The *Tunstall* and *Steele* cases were decided by this Court in 1944. This case was commenced in October 1947. The temporary injunction against continued discriminatory firing of colored employees will, by the time this case is decided by this Court, have been stayed by the court below for almost two years. During all that time respondent has disregarded the ruling of this Court, even after its reinforcement by a final decision on the merits in the *Tunstall* case by the Court of Appeals for the Fourth Circuit. 163 F. 2d 289, certiorari denied, 332 U. S. 841. The colored firemen have continued to lose their jobs. Clearly, in these circumstances justice delayed will be justice denied.

The other questions are whether the respondent was properly served, whether the Norris-LaGuardia Act precludes the issuance of an injunc-

tion in this type of case under the Railway Labor Act, and whether the lower court abused its discretion in granting a temporary injunction. Respondent has indicated [2] that it will urge these alternative grounds in support of the judgment in its favor, as it has the right to do. The points are not difficult or complicated, and can readily be disposed of on the record now before the Court. If they are not, further proceedings in the Court of Appeals will be necessary, with the possibility of further review here—proceedings which the past progress of this case indicates may well take a long time. And even if petitioners should ultimately prevail in all respects on these points, they will only have obtained a temporary injunction. There will still have to be a trial on the merits.

These questions are fully argued in petitioners' brief, with which we agree, and need not be reargued in this brief. Respondent's contentions as to these points seem no more substantial than those relating to venue.

We wish to emphasize, however, the need for the interlocutory relief accorded petitioners by the District Court. In view of this Court's decisions as to the unlawfulness of the very contract here in issue, and the obvious injury to the colored workers if interlocutory protection is not accorded them, it would have been an abuse of discretion for the

[2] See brief in opposition, p. 4n.

temporary injunction to have been denied. It was thus clear error for the Court of Appeals to vacate the injunction by granting a stay.[3]

Respectfully submitted,

PHILIP B. PERLMAN,
*Solicitor General.*

ROBERT L. STERN,
*Special Assistant to the Attorney General.*

SEPTEMBER, 1949.

---

[3] Even if the Court of Appeals' decision on the question of venue should be affirmed, it does not follow that the temporary injunction should be immediately vacated, for the Court of Appeals did not order the case dismissed but transferred it to the Northern District of Ohio pursuant to 28 U.S.C. § 1406(a). Inasmuch as the plaintiffs are in need of interlocutory protection against further discriminatory discharges, the temporary injunction granted by the District Court for the District of Columbia should remain in effect until such time as the matter can be submitted to the Ohio court. In view of the newness of the statutory provision for transfer, the point is a novel one. But the answer which the public interest requires seems clear if persons are not to be irreparably harmed as a result of having, reasonably and in good faith, chosen what may turn out to be the wrong venue.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 — 955248 — 149